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PP v. KANNAN LETCHUMANAN

COURT OF APPEAL, PUTRAJAYA
AHMAD ZAIDI IBRAHIM JCA
AZMI ARIFFIN JCA
FAIZAH JAMALUDIN JCA
B [CRIMINAL APPEAL NO: A-09-133-05-2024]
17 JUNE 2025

Abstract – *The breath test under s. 45B of the Road Transport Act 1987 is not an 'initial breath test' that makes it mandatory for an investigating officer to request further specimens of breath, blood, or urine under s. 45C. The court cannot read words into a statute that are not expressly stated.*

C

D ***ROAD TRAFFIC:*** *Dangerous driving – Driving motor vehicle with alcohol concentration above prescribed limit – Breath test – Whether breath test under s. 45B(1) of Road Transport Act 1987 ('RTA') 'initial breath test' – Whether if positive, mandatory for investigating officer to request accused to provide two specimens of his breath or specimen of blood or urine under s. 45C(1) of RTA – Motor Vehicles (Breath, Blood and Urine Tests) Rules 1995*

E ***STATUTORY INTERPRETATION:*** *Construction of statute – Road Transport Act 1987 – Driving motor vehicle with alcohol concentration above prescribed limit – Breath test – Whether breath test under s. 45B(1) of Road Transport Act 1987 ('RTA') 'initial breath test' – Whether if positive, mandatory for investigating officer to request accused to provide two specimens of his breath or specimen of blood or urine under s. 45C(1) of RTA*

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The respondent was charged, and convicted, at the Magistrates' Court for driving a motor vehicle with alcohol concentration above the prescribed limit, an offence under s. 45A(1) of the Road Transport Act 1987 ('RTA').
G Upon appeal at the High Court, the respondent was acquitted and discharged of the said charges. The High Court Judge's ('HCJ') acquittal of the respondent was premised on his interpretation that the breath test under s. 45B(1) of the RTA was 'an initial breath test' which, if positive, made it mandatory for the investigating officer to request the accused to provide two
H specimens of his breath or a specimen of blood or urine under s. 45C(1) of the RTA. The HCJ held that the respondent's conviction was unsafe as the investigating officer did not request for two specimens of the respondent's breath, or specimens of his blood or urine under s. 45C(1) of the RTA. Hence, the present appeal against the HCJ's finding that the provisions in s. 45C(1) was mandatory; not against the respondent's acquittal. The issues
I that arose for adjudication concerned the interpretation of the RTA governing: (i) the request for specimens of breath, blood and urine under ss. 45B and 45C of the RTA from persons suspected of having committed an

offence either under: (a) ss. 44 or 45, involving intoxicating liquor; or (b) s. 45A for driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit; and (ii) the tests of these specimens under the RTA and the Motor Vehicles (Breath, Blood and Urine Tests) Rules 1995, made by the Minister under s. 66 of the RTA ('BBU Test Rules'). A B

Held (allowing appeal)
Per Faizah Jamaludin JCA delivering the judgment of the court:

(1) Section 45F of the RTA governs the evidence in proceedings for offences under ss. 44 or 45 involving intoxicating liquor and under s. 45A. Sections 45F and 45G do not stipulate that evidence of alcohol in the specimen of breath, in proceedings under ss. 44 or 45 involving liquor and s. 45A, must be provided by the accused under both ss. 45B and 45C. Additionally, 'breath test' for the purposes of ss. 44 and 45B to 45F, as defined in s. 45G of the RTA, includes a 'preliminary test for the purpose of obtaining, by means of a prescribed breathanalyser, an indication whether the proportion of alcohol in a person's breath, blood or urine equals or exceeds the prescribed limit'. (paras 58-60) C D

(2) Section 45G defines 'breath test' to include a preliminary test for the purpose of obtaining by means of a prescribed breathalyser an indication of whether the proportion of alcohol in a person's breath exceeds the prescribed limit. The 'prescribed limit' for alcohol is defined in s. 45G as 22mg of alcohol in 100ml of breath. Furthermore, under s. 45F, the evidence of the proportion of alcohol in a specimen of breath against an accused for offences under ss. 44 and 45 involving intoxicating liquor and s. 45A of the RTA is 'a statement automatically produced by a prescribed breathanalyser and a certificate signed by a police officer … that the statement relates to a specimen provided by the accused at the date and time shown in the statement'. Both ss. 45F and 45G do not state that the breath test conducted under s. 45B is an initial breath test or that 'if positive' the investigating officer is obliged to request for further specimens of breath or specimens of blood or urine under s. 45(1) of the RTA. (paras 63-65) E F G

(3) The High Court fell into error and was plainly wrong to have read words into the RTA – that the breath test under s. 45B of the RTA was an 'initial breath test' and that the breath test, or blood or urine test under s. 45C was mandatory if the 'initial breath test' under s. 45B was positive, when no such words were stated in the said sections of the RTA. Further, the High Court was plainly wrong to hold that, based on r. 4 of the BBU Test Rules, a police officer is under a legal duty to procure two specimens of breath test under s. 45B(1) of the RTA. Rule 4 of the BBU Test Rules expressly states that the procedures in the First Schedule of the BBU Test Rules were applicable for breath tests conducted under s. 45C of the RTA. Nowhere does it state that it is H I

applicable for breath tests conducted under s. 45B of the RTA. Similar to what it did with ss. 45B and 45C of the RTA, the High Court had read words into the BBU Test Rules where none existed. (paras 69 & 70)

(4) Although the prosecution was not proceeding with the appeal against the respondent's acquittal, it did not withdraw the appeal against the acquittal. Additionally, the fact that the respondent's acquittal was based on the High Court's wrong construction and interpretation of the RTA, meant that the acquittal was unsafe. Therefore, the High Court's decision was set aside. The Magistrates' Court's conviction of the respondent, under s. 45A(1) of the RTA, was restored. The sentence of 14 days' imprisonment by the Magistrates' Court was set aside and substituted with a sentence of one day imprisonment. As for the sentence of fine, the amount of fine was increased from RM10,000 to RM15,000, in default six months' imprisonment. The order of suspension of the respondent's driving licence for a period of two years was affirmed. (paras 72-75)

Case(s) referred to:

AJS v. JMH & Another Appeal [2022] 1 CLJ 331 FC ***(refd)***

Maple Amalgamated Sdn Bhd & Anor v. Bank Pertanian Malaysia Bhd [2021] 8 CLJ 409 FC ***(refd)***

R v. Secretary Of State For Environment, Transport And The Regions Ex P Spath Holme Ltd [2001] 2 AC 349 ***(refd)***

Tebin Mostapa v. Hulba-Danyal Balia & Anor [2020] 7 CLJ 561 FC ***(refd)***

Yong Tshu Khin & Anor v. Dahan Cipta Sdn Bhd & Anor And Other Applications [2021] 1 CLJ 631 FC ***(refd)***

Legislation referred to:

Interpretation Acts 1948 and 1967, ss. 15, 16, 17A

Motor Vehicles (Breath, Blood and Urine Tests) Rules 1995, rr. 4, 6, 7, 8(1), (2), First Schedule item 1, Third Schedule, Fourth Schedule

Road Transport Act 1987, ss. 44, 45(1), (3), 45A(1), 45B(1)(a), (b), (2), (3), (4), 45C(1)(a), (b), (2), (3), (4), (5), 45D, 45E, 45F(2), (3), 45G(2)

For the appellant - Mohd Fairuz Johari; AG's Chambers

For the respondent - Shivdev Singh & Kaladevi Chandrasekharan; M/s L H Singh & Co

[Editor's note: For the High Court judgment, please see Kannan Letchumanan v. PP [2024] 8 CLJ 486 (overruled).]

Reported by Najib Tamby

JUDGMENT

Faizah Jamaludin JCA:

This Appeal

[1] The respondent was acquitted, and discharged of all charges against him, by the Ipoh High Court on 15 May 2024, from a conviction by the Ipoh

Magistrates Special Traffic Court on one charge under s. 45A(1) of the Road Transport Act 1987 ("RTA") for driving a motor vehicle with alcohol concentration above the prescribed limit.

[2] The learned High Court Judge's acquittal of the respondent was premised on his interpretation that the breath test under s. 45B(1) of the RTA is "an initial breath test", which if positive, makes it mandatory for the investigating officer to request the accused to provide two specimens of his breath or a specimen of blood or urine under s. 45C(1) of the RTA.

[3] The High Court held that the respondent's conviction was unsafe because the investigating officer did not request the respondent for two specimens of his breath, or specimens of his blood or urine under s. 45C(1) of the RTA.

[4] Dissatisfied with the High Court's acquittal of the respondent, the appellant in his notice of appeal had appealed against the whole of the decision of the High Court. However, during the hearing of this appeal, the learned Deputy Public Prosecutor ("DPP") orally informed us that the appellant is not appealing against the respondent's acquittal; that he is only appealing against the High Court's finding that the provisions in s. 45C(1) of the RTA is mandatory. Nonetheless, the DPP did not withdraw the appeal against the respondent's acquittal.

Issue

[5] The issue at the heart of this appeal is the interpretation of the provisions of the RTA governing:

(i) the request for specimens of breath, blood and urine under ss. 45B and 45C of the RTA from persons suspected of having committed an offence either under (a) ss. 44 or 45 involving intoxicating liquor, or (b) s. 45A for driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit; and

(ii) the tests of these specimens under the RTA and the Motor Vehicles (Breath, Blood and Urine Tests) Rules 1995 (PU(A) 227/1995), made by the Minister under s. 66 of the RTA ("BBU Test Rules").

[6] Therefore, in deciding whether the learned High Court Judge had correctly interpreted the RTA by holding (i) that the breath test under s. 45B(1) of the RTA is "an initial breath test", and (ii) that if the result of this "initial breath test" is positive, it is mandatory for the investigating officer to request the suspect to provide two further specimens of breath or a specimen of blood or urine under s. 45C(1) of the RTA, this court must interpret the RTA in accordance with the established principles of statutory interpretation – both at common law and under the Interpretation Acts 1948 and 1967 (the "Interpretation Acts").

A **Principles Of Statutory Interpretation**

[7] The basic tenet of statutory interpretation is the process of giving meaning to the words used in legislation: see *Cross: Statutory Interpretation*, 3rd edn (1995). As observed by Lord Bingham in *R v. Secretary of State for Environment, Transport and the Regions ex p Spath Holme Ltd* [2001] 2 AC 349,
B at 388D, courts in interpreting any statute "the overriding aim of the court must always be to give effect to the intention of Parliament as expressed in the words used".

[8] The common law principles of statutory interpretation was
C summarised by the Federal Court in *Tebin Mostapa v. Hulba-Danyal Balia & Anor* [2020] 7 CLJ 561; [2020] 4 MLJ 721; [2020] 5 AMR 579 ("*Tebin Mostapa*"). These principles are: first, in construing a statute, courts must give effect to the object and intent of Parliament in enacting the statute. Hence, courts in construing any statute must look at the words in the statute and apply the plain and ordinary meaning of the said words. Secondly, if the
D words are not clear, then the court may adopt the purposive approach in construing the meaning of the words used. Thirdly, the relevant provision of a statute must be read in accordance with the legislative purpose, especially where the literal meaning of the provision is clear and reflects the purpose of the enactment.

E **[9]** The principles of statutory interpretation summarised in *Tebin Mostapa* was referred with approval by the Federal Court in its majority judgment in *AJS v. JMH & Another Appeal* [2022] 1 CLJ 331; [2022] 1 MLJ 778; [2022] 1 AMR 617 ("*AJS v. JMH*"), where Tengku Maimun Tuan Mat CJ (delivering the majority judgment of the Federal Court) reiterated that in
F interpreting statutes, courts should begin with the literal rule and that it should only use the purposive approach when there is ambiguity in the words of the statute.

Literal Rule

G **[10]** Based on these settled common law principles of statutory interpretation, in construing and interpreting a statute, courts must first apply the literal rule.

[11] Pursuant to the literal rule, courts must:

H (i) give effect to the object and intent of Parliament in enacting the statute;

(ii) read the relevant provisions of a statute in accordance with its legislative purpose;

(iii) interpret the words used by Parliament in the statute and to give effect to the words used by Parliament;
I

(iv) interpret the statute in a manner that advances the object and purpose of the enactment, so as to give full meaning and effect to the enactment in achieving its declared objective; and

(v) construe the statute as a whole and the words used must be given their plain grammatical meaning.

[12] Where the words of a statute are unambiguous, plain and clear, courts must give these words their natural and ordinary meaning. Courts cannot add or subtract any word in a statute: it ought not to read words into a statute unless a clear reason for it is to be found in the statute itself.

Purposive Approach

[13] A court's duty when interpreting a statute is limited to interpreting the words used by Parliament – it has no power to fill in the gaps disclosed. Even if the words in a statute are ambiguous, the power and duty of courts "to travel outside them on a voyage of discovery are strictly limited".

[14] If the words in the statutes are ambiguous or not clear, or where a literal reading of the provision bears two or more meanings, courts may use the purposive approach in construing the meaning of the words used: see *Tebin Mostapa, AJS v. JMH;* and *Yong Tshu Khin & Anor v. Dahan Cipta Sdn Bhd & Anor And Other Applications* [2021] 1 CLJ 631; [2021] 1 MLJ 478 ("*Dahan Cipta*").

[15] In taking a purposive approach, a statute has to be read in the correct context. Courts may look at extraneous materials that bears on the background against which the legislation was enacted. Hansard and Parliamentary speeches may be referred to as interpretive aid: see *Maple Amalgamated Sdn Bhd & Anor v. Bank Pertanian Malaysia Bhd* [2021] 8 CLJ 409; [2021] 6 MLJ 348.

The Interpretation Acts 1948 And 1967

[16] In interpreting statutes, apart from using the aforementioned common law principles of statutory interpretation, courts must also comply with the requirements under the Interpretation Acts.

[17] When using the purposive approach, regard must be had for the purpose of the statute as outlined in s. 17A of the Interpretation Acts. Section 17A of the Interpretation Acts reads:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[18] Nonetheless, as discussed above, this regard to "the purpose or object of the Act" in the Interpretation Acts has been interpreted by the Federal Court in *Tebin Mostapa, AJS v. JMH* and *Dahan Cipta* as being secondary to the literal rule.

[19] It is only if the words in the provision of the statute are ambiguous or unclear, or in interpreting the protective language of social legislation can courts use the purposive approach as provided in s. 17A of the Interpretation Acts to interpret a statute.

[20] Additionally, s. 15 of the Interpretation Acts requires that the long title and preamble and every schedule to an Act shall be construed and have effect as part of the Act. Section 15 reads:

> The long title and preamble and every schedule (together with any note or table annexed to the schedules) to an Act or to any subsidiary legislation shall be construed and have effect as part of the Act or subsidiary legislation.

[21] Furthermore, courts are required under s. 16 of the Interpretation Acts to take notice of the division into parts or chapters of an Act. Section 16 reads:

> Where an Act or subsidiary legislation is divided into parts or chapters or otherwise, the fact and particulars of the division shall, without express mention thereof in the Act or subsidiary legislation, be taken notice of in all courts and for all purposes whatsoever.

Interpretation Of ss. 44 And 45B To 45F Of The RTA

[22] The interpretation of ss. 44 and 45B to 45F of the RTA is governed by s. 45G of the RTA. Section 45G(1) of the RTA reads:

> (1) For the purposes of sections 44 and 45B to 45F –
>
> "breath test" includes a preliminary test for the purpose of obtaining, by means of a prescribed breathanalyser, an indication whether the proportion of alcohol in a person's breath, blood or urine equals or exceeds the prescribed limit;
>
> "fail" includes refuse;
>
> "police station" includes any place or conveyance authorized or appointed by the Inspector General of Police to be used as a police station;
>
> "prescribed limit" means –
>
> (a) 22 microgrammes of alcohol in 100 millilitres of breath;
>
> (b) 50 milligrammes of alcohol in 100 millilitres of blood; or
>
> (c) 67 milligrammes of alcohol in 100 millilitres of urine.

[23] Section 45G(2) of the RTA goes on to state:

> (2) A person does not provide a specimen of breath for a breath test or for analysis unless the specimen is sufficient to enable the test or the analysis to be carried out and provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.

Analysis And Findings Of This Court

Breath Test Under s. 45B(1) Of The RTA

When May A Specimen Of Breath For A Breath Test Be Requested Under s. 45B(1) of the RTA?

[24] Under s. 45B(1) of the RTA, a police officer in uniform may require a person to provide a specimen of his breath for a breath test when the police officer has reasonable cause to suspect that:

(i) the person has committed an offence under ss. 44 or 45 of the RTA involving intoxicating liquor, or under s. 45A for driving or being in charge of a motor vehicle with alcohol concentration above the limit; or

(ii) he was the driver of, attempted to drive, or was in charge of a motor vehicle in an accident involving one or more vehicles on a road or other public place.

Section 45B(1)(a) and (b) of the RTA reads:

> 45B: Breath test
>
> (1) Where a police officer in uniform has reasonable cause to suspect –
>
> (a) that a person has committed an offence under section 44 or 45 involving intoxicating liquor or under section 45A: or
>
> (b) that a person was the driver of or attempted to drive or was in charge of a motor vehicle in an accident involving one or more vehicles on a road or other public place,
>
> he may, subject to section 45D require that person to provide a specimen of breath for a breath test.

[25] The offences under ss. 44, 45 and 45A of the RTA are offences of driving under the influence of intoxicating liquor or drugs (s. 44); being in charge of a motor vehicle under the influence of intoxicating liquor or drugs (s. 45); and driving or being in charge of motor vehicle with alcohol concentration above prescribed limit (s. 45A).

[26] It is an offence for a person when required to provide a specimen of his breath to fail to do so without reasonable excuse. Section 45B(4) states:

> (4) A person who, without reasonable excuse, falls to provide a specimen of breath when required to do so in pursuance of this section shall be guilty of an offence and shall on conviction be punished with imprisonment for a term not exceeding two years and a fine of not less than ten thousand ringgit and not more than thirty thousand ringgit and, in the case of a second or subsequent conviction, with imprisonment for a term not exceeding five years and a fine of not less than twenty thousand ringgit and not more than fifty thousand ringgit.

A Who Are The Persons That May Be Asked To Provide A Specimen Of Breath Under s. 45B(1) Of The RTA?

[27] The offences under s. 44 of the RTA are for driving a motor vehicle on a road or other public place under the influence of intoxicating liquor or drugs, to such an extent as to be incapable of having proper control of the B motor vehicle; or having so much alcohol in his body that the proportion of it in his breath, blood or urine exceeds the prescribed limit. And a person commits an offence under s. 45 of the RTA for being in charge of a motor vehicle, which is on a road or other public place, but not driving the vehicle, is unfit to drive in that he is under the influence of intoxicating liquor or of C a drug to such an extent as to be incapable of having proper control of a motor vehicle.

[28] However, in respect of offences under ss. 44 and 45 of the RTA, under s. 45B(1)(a) of the RTA the power of a police officer in uniform to require a person to provide a specimen of breath is for offences involving D intoxicating liquor only and not for those involving drugs.

[29] Therefore, the persons who may be asked to provide a specimen of breath for a breath test under s. 45B(1) are those who a police officer in uniform have reasonable cause to suspect to have a committed an offence under ss. 44 or 45 involving intoxicating liquor or s. 45 of the RTA, *ie*, E driving or being in charge of a motor vehicle while under the influence of intoxicating liquor or with alcohol concentration above the prescribed limit.

Who May Ask For A Specimen Of Breath Under s. 45B(1) of the RTA?

[30] A police officer in uniform who has reasonable cause to suspect a F person is driving or being in charge of a motor vehicle while under the influence of intoxicating liquor or with alcohol concentration above the prescribed limit.

Who May Conduct The Breath Test Under s. 45B(1) Of The RTA?

G **[31]** Only a police officer can conduct the breath test under s. 45B(1) of the RTA.

[32] Section 45(3) of the RTA states that the breath test under s. 45B(1) shall be conducted by the police officer who made the requirement or any other police officer. Section 45B(3) reads:

H

> (3) A breath test required under subsection (1) shall be conducted by the police officer making the requirement or any other police officer.

Where Can A Specimen Of Breath Be Required To Be Provided For A Breath Test?

I **[33]** A specimen of breath for a breath test under s. 45B(1) of the RTA may be required to be provided at either one of these three places: (i) at the place where the requirement was made; (ii) near the place where the requirement

was made; or (iii) at a police station. Section 45B(2) states:

> (2) A person may be required under subsection (1) to provide a specimen either at or near the place where the requirement is made or, if the requirement is made under paragraph (1)(b) and the police officer making the requirement thinks fit, at a police station specified by the police officer.

Provision Of Specimens For Analysis Under s. 45C(1) Of The RTA

When May A Person Be Required To Provide Specimens Under s. 45C(1) Of The RTA?

[34] Under s. 45C(1) of the RTA, a police officer in the course of an investigation of the offence may request a person suspected to have committed an offence under ss. 44 or 45 of the RTA involving intoxicating liquor, or under s. 45A of the RTA for driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit, to provide two specimens of breath, or a specimen of blood or a specimen of urine. Section 45C(1) of the RTA states:

> 1) In the course of an investigation whether a person has committed an offence under section 44 or 45 involving intoxicating liquor or under section 45A a police officer may, subject to the provisions of this section and to section 45D, require him –
>
> (a) to provide two specimens of breath for analysis by means of a prescribed breathanalyser; or
>
> (b) to provide a specimen of blood or urine for a laboratory test, notwithstanding that he has been required to provide a specimen of breath for a breath test under subsection 45B(1).

Who May Ask For The Specimens?

[35] The specimens may be asked by the investigating officer ("IO") *ie*, a police officer in the course of an investigation of a person suspected to have committed an offence under ss. 44 or 45 involving intoxicating liquor, or under s. 45A: see s. 45C(1) of the RTA.

What Specimens May Be Requested?

[36] In contrast to s. 45B(1) of the RTA, which only allows for the request of a specimen of breath by a police officer in unform, under s. 45(1), an IO may request from a suspect: (i) two specimens of breath for analysis by means of prescribed breathalyser; or (ii) one specimen of blood or urine for a laboratory test: see s. 45C(1) of the RTA.

Specimen Of Breath

[37] Pursuant to s. 45C(1) of the RTA, an IO, in the course of investigation of a suspect of offences under ss. 44, 45 or 45A, may ask the suspect to provide two specimens of breath even if the suspect had been asked to provide a specimen of breath for a breath test under s. 45B(1) of the RTA: see s. 45C(1) of the RTA.

A Specimen Of Blood Or Urine

[38] Additionally, an IO may ask the suspect to provide a specimen of blood or urine even though: (i) he had already provided a specimen, or (ii) had been asked to provide two specimens of breath: see s. 45C(4) of the RTA reproduced in para. [44] below.

B

[39] However, an IO may only ask for either a specimen of blood or a specimen of urine: he cannot ask for specimens of both blood and urine. Section 45C(5) of the RTA expressly states that for specimens other than breath, the police officer asking for the specimen shall, subject to medical advice, decide whether the specimen is blood or urine. Section 45C(5) of the RTA states:

C

> (5) Where a specimen other than a specimen of breath is required, the police officer making the requirement shall, subject to medical advice, decide whether it is to be a specimen of blood or urine.

D **[40]** Moreover, the form in the Fourth Schedule of the BBU Test Rules requires that the police officer who is requesting for the analysis of the blood or urine sample to delete either one on the form. An image of the request form is reproduced below:

E

FOURTH SCHEDULE

[Subrule 8 (1)]

ROAD TRANSPORT ACT 1987

MOTOR VEHICLES (BREATH, BLOOD AND URINE TESTS) RULES 1995

REQUEST FOR ANALYSIS OF BLOOD/URINE* SPECIMEN

F

Police Report No. :

Police Station :

Date :

The Analyst,

G

I am sending herewith ..... specimen of blood/urine* personally/through* .....

(name of authorized officer)

for your analysis and report.

2. This specimen is contained in a sealed bottle and labelled in accordance with the Third Schedule of the Motor Vehicles (Breath, Blood and Urine Tests) Rules 1995.

H

The type of analysis required for the sample is as follows:

.....

.....

.....

(Name and designation of police officer)

I

(*delete where inapplicable)

[41] Therefore, the specimens that may be requested by an IO in the course of investigation a person suspected of having committed an offence under ss. 44 or 45 involving intoxicating liquor, or under s. 45A are: (i) two specimens of breath, and/or (ii) a specimen of (a) blood or (b) of urine.

Where Can The Specimens Be Requested?

[42] Specimen of breath: In contrast to a police officer in uniform's power to request for a specimen of breath for a breath test under s. 45B of the RTA, a police officer may only request for a specimen of breath under s. 45C at a police station. Section 45C(2) of the RTA states:

> (2) A requirement under this section to provide a specimen of breath can only be made at a police station.

[43] Specimen of blood or urine: Pursuant to s. 45C(4) RTA, a police officer may only request a sample of blood or urine at (i) a police station, or (ii) a hospital.

[44] Nonetheless, a specimen of blood or urine cannot be requested at a police station unless:

(i) the police officer requesting for the specimens have reasonable cause to believe that for medical reasons that a specimen of breath (i) cannot be provided, or (ii) should not be required; or

(ii) at the time the request is made, (i) the prescribed breathalyser is not available at the police station, or (ii) it is not practicable to use the breathalyser for any other reason.

Section 45C(4) of the RTA states:

> (4) A requirement under this section to provide a specimen of blood or urine can only be made at a police station or at a hospital, but it cannot be made at a police station unless –
>
> (a) the police officer making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required; or
>
> (b) at the time the requirement is made, the prescribed breathanalyser is not available at the police station or it is for any other reason not practicable to use the breathanalyser, and may be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.
>
> (5) Where a specimen other than a specimen of breath is required, the police officer making the requirement shall, subject to medical advice, decide whether it is to be a specimen of blood or urine.

[45] Therefore, pursuant to s. 45C(4) of the RTA, a police officer may only ask for a specimen of blood or a specimen of urine at a police station if:

A (i) he has reasonable cause to believe that (a) the suspect cannot provide a specimen of breath, or (b) a specimen of breath should not be asked from the suspect; or

(ii) if the prescribed breathalyser (a) is not available at the police station, or (b) is not practicable to use for any reason.

B *Breath Test Under s. 45C Of The RTA*

Where Must The Breath Test Under s. 45C Be Conducted?

[46] Under s. 45C(2) of the RTA, a breath test under s. 45C must be conducted at a police station. Section 45C(2) reads:

C (2) A requirement under this section to provide a specimen of breath can only be made at a police station.

Who May Conduct The Breath Test Under s. 45C Of The RTA?

[47] Pursuant to s. 45C(3) of the RTA, and the BBU Test Rules (r. 4 and item 1 of the First Schedule), a breath test can only be conducted by a police officer not below the rank of sergeant or by the officer in charge of the police station, who has been trained and duly authorised to operate the breathanalyser. Section 45C(3) reads:

D (3) A breath test under this section shall only be conducted by a police officer not below the rank of sergeant or by an officer in charge of a police station and shall only be conducted at a police station.

Item 1 of the First Schedule of the BBU Test Rules states:

E 1. The breath test shall be carried out by a police officer who has been trained and duly authorised to operate the breathanalyser.

How Must A Breath Test Under s. 45C Be Conducted?

[48] Pursuant to s. 45C(1)(a) of the RTA, the two specimens of breath provided under s. 45C are to be analysed by a prescribed breathalyser.

F **[49]** A breath test must be conducted in accordance with the BBU Test Rules. Rule 4 of the BBU Test Rules stipulates that the police officer must conduct breath test in accordance with the procedures set out in the First Schedule of the Rules. Rule 4 reads:

4. Breath test

G Where a police officer requires a person to provide specimens of breath for a breath test under section 45C of the Act, the police officer shall conduct the breath test in accordance with the procedures as set out in the First Schedule.

H **[50]** The procedures in the First Schedule of the BBU Test Rules for conducting a breath test under s. 45C of the RTA are reproduced below:

I

First Schedule

Procedures In Breath Test

(Rule 4)

1. The breath test shall be carried out by a police officer who has been trained and duly authorised to operate the breathanalyser.

2. No person shall be required to undergo a breath test within twenty minutes of his taking of any type of food, drink (alcoholic or otherwise), mouthspray or any type of medication.

3. No person shall be required to undergo a breath test within five minutes of his smoking.

4. No breath specimen may be taken from any person unless he is first informed of the requirement to provide two specimens of breath in the manner provided by the Act.

5. The police officer conducting the test shall ensure that the breathanalyser has been issued with the certificate of fitness pursuant to rule 5 of the Motor Vehicles (Breath, Blood and Urine Tests) Rules 1995 and thereafter conduct the test in the following manner:

(a) attach a new mouthpiece to the breath tube;

(b) instruct the person to blow through the mouthpiece in one long continuous breath until his breath specimen is accepted by the breathanalyser for an analysis;

(c) note in writing the reading given by the evidential breathanalyser;

(d) repeat the procedure as in paragraph (b);

(e) note in writing the reading given by the breathanalyser and thereafter inform the person of this reading and the reading referred to in paragraph (c);

(f) sign the print-out indicating such information and details as the Chief Police Officer may determine from time to time and ensure that the said print-out is also signed by the person; and

(g) give a copy of the print-out referred to in, paragraph (f) to the person.

Blood Test Under s. 45C Of The RTA

[51] Where a police officer requires a suspect to provide a specimen of blood to determine whether the proportion of alcohol in the said specimen exceeds the prescribed limit, r. 6 of the BBU Test Rules stipulates that the specimen of blood shall be taken in accordance with the advice of an analyst. Rule 6 of the BBU Test Rules reads:

A

6. Blood test

Where a police officer requires a person to provide a specimen of blood for a blood test to determine whether the proportion of alcohol in the specimen exceeds the prescribed limit, the blood specimen shall be taken in accordance with the advice of an analyst.

B

[52] The specimen of blood may only be taken by a Government medical officer. Section 45F(3) expressly states that a specimen of blood shall be disregarded unless it is taken by a Government medical officer. Section 45F(3) reads:

C

(3) A specimen of blood shall be disregarded unless it was taken from the accused by a government medical officer; and evidence that a specimen of blood was so taken may be given by the production of a document purporting to certify that fact and signed by a government medical officer.

[53] Pursuant to s. 45C(1)(b) of the RTA read with r. 8(1) of the BBU Test Rules, the analysis of the specimen of blood taken from the suspect must be analysed by a laboratory test conducted by an analyst.

D

[54] Under r. 8 of the BBU Test Rules, the request for the analysis must be made by the police officer must be in the form set out in the Fourth Schedule of the BBU Test Rules, and the result of the analysis must be in the form set out in the Fifth Schedule of the said Rules. Rules 8(1) and 8(2) read:

E

8. Analysis by analyst

(1) The request for analysis of a urine or a blood specimen by an analyst shall be made in the form as set out in the Fourth Schedule.

F

(2) A certificate of the result of an analysis by an analyst shall be in the form as set out in the Fifth Schedule.

Urine Test Under s. 45C Of The RTA

[55] Where a police officer requires a suspect to provide a specimen of urine to determine whether the proportion of alcohol in the said specimen exceeds the prescribed limit, r. 7 of the BBU Test Rules stipulates that the police officer shall conduct the urine test in accordance with procedures prescribed in the Third Schedule of the BBU Test Rules. Rule 7 of the BBU Test Rules reads:

G

7. Urine test

H

Where a police officer requires a person to provide a specimen of urine for a urine test to determine whether the proportion of alcohol in the specimen exceeds the prescribed limit, the police office shall conduct the urine test in accordance with the procedures as prescribed in the Third Schedule.

I

[56] The procedures for taking a urine specimen by a police officer in the Third Schedule of the BBU Test Rules is reproduced below:

Third Schedule

Procedures On The Taking Of Urine Specimen By A Police Officer

(Rule 7)

1. The person shall be provided with two clean bottles with covers and where the person is a woman, she may also be provided with a beaker and in such a case she shall fill the beaker with her urine and shall thereafter transfer the content into the bottles.

2. A police officer shall take all reasonable measures to ensure that the person fills the bottles or beakers, as the case may be, with his or her own urine.

3. The amount of urine required for a specimen shall not be less than 30ml., or 2/3 content of the bottle, for each 50ml. bottle.

4. The bottles containing the urine specimens shall be sealed and labelled with the following details:

(a) name of the person;

(b) identity card number of the person;

(c) date of birth of the person;

(d) police report or reference number;

(e) date of the taking of urine specimen;

(f) signature of the person; and

(g) such other information as the Chief Police Officer may deem fit.

5. Upon compliance with the above-mentioned requirements, the bottles shall immediately be sent for a laboratory test to be conducted by an analyst.

[57] As with a specimen of blood, a specimen of urine must also be analysed by an analyst in a laboratory, where the request form for the analysis must be in the form set out in the Fourth Schedule of the BBU Test Rules. Similarly, the test result for the urine specimen must also be in the form of a certificate set out in the Fifth Schedule of the said Rules: see s. 45C(1)(b) of the RTA, r. 8(1)(a) and (b), and the Fourth and Fifth Schedules of the BBU Test Rules.

Evidence In Proceedings For Offences Under ss. 44 or 45 Involving Intoxicating Liquor And Under s. 45A Of The RTA

[58] Section 45F of the RTA governs the evidence in proceedings for offences under ss. 44 or 45 involving intoxicating liquor and under s. 45A. Section 45F(2) provides that evidence of the proportion of alcohol in a specimen of breath, blood or urine may be given either by:

(i) a statement automatically produced by a prescribed breathalyser and a certificate signed by a police officer confirming that the statement automatically produced by the breathalyser relates to specimen provided by the accused at the date and time shown in the statement; or

(ii) a certificate signed by a Government medical practitioner or a Government chemist as to the proportion of alcohol in the specimen of blood or urine identified in the certificate.

Section 45F(2) of the RTA reads:

> 45F. Evidence in proceedings for an offence under sections 44 and 45 involving intoxicating liquor and section 45A
>
> ...
>
> (2) Evidence of the proportion of alcohol in a specimen of breath, blood or urine may, subject to subsections (4) and (5), be given by the production of a document or documents purporting to be either –
>
> (a) a statement automatically produced by a prescribed breathanalyser and a certificate signed by a police officer (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement; or
>
> (b) a certificate signed by a government medical practitioner or government chemist as to the proportion of alcohol found in a specimen of blood or urine identified in the certificate.
>
> ...

[59] Furthermore, ss. 45F and 45G of the RTA do not stipulate that evidence of alcohol in the specimen of breath, in proceedings under ss. 44 or 45 involving intoxicating liquor and s. 45A, must be provided by the accused under both ss. 45B and 45C.

[60] Additionally, "breath test" for the purposes of ss. 44 and 45B to 45F, as defined in s. 45G of the RTA, includes a "preliminary test for the purpose of obtaining, by means of a prescribed breathalyser, an indication whether the proportion of alcohol in a person's breath, blood or urine equals or exceeds the prescribed limit".

[61] Neither ss. 45F nor 45G of the RTA state that a "breath test" is an "initial breath test" – as held by the learned High Court Judge. The learned High Court Judge stated in para. 14 of his grounds of judgment that if the "preliminary breath test is positive" then the IO is duty-bound to request for and test the specimens of breath or blood or urine under s. 45C(1)(a) or (b) of the RTA.

[62] We are not certain as to what the learned judge meant by "preliminary breath test is positive". The word "positive" is not in any of the provisions in ss. 44 to 45G of the RTA.

[63] Moreover, s. 45G of the RTA defines "breath test" to include a preliminary test for the purpose of obtaining by means of a prescribed breathalyser an indication of whether the proportion of alcohol in a person's breath exceeds the prescribed limit. The "prescribed limit" for alcohol is defined in s. 45G as 22mg of alcohol in 100ml of breath.

[64] Furthermore, under s. 45F, the evidence of the proportion of alcohol in a specimen of breath against an accused for offences under ss. 44 and 45 involving intoxicating liquor and s. 45A of the RTA is "a statement automatically produced by a prescribed breathalyser and a certificate signed by a police officer ... that the statement relates to a specimen provided by the accused at the date and time shown in the statement".

[65] Both ss. 45F and 45G of the RTA do not state that the breath test conducted under s. 45B is an initial breath test or that "if positive" the IO is obliged to request for further specimens of breath or specimens of blood or urine under s. 45(1) of the RTA.

[66] The words in ss. 44 to 45G of the RTA are plain and unambiguous. Based on the established principles of statutory interpretation, the High Court is under a duty to interpret the words used by Parliament in the RTA and to give effect to the said words.

[67] The High Court failed to take into account that, under s. 45F of the RTA, the evidence for the offence of driving or being in charge of a motor vehicle under the influence of intoxicating liquor under ss. 44 and 45 of the RTA and for driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit under s. 45A is either (i) a statement automatically produced by a prescribed breathalyser and a certificate signed by a police officer that the statement relates to a specimen provided by the accused at the date and time shown on the statement produced by the prescribed breathalyser; or (ii) a certificate signed by a Government medical practitioner or Government chemist as to the proportion of alcohol found in a specimen of blood or urine identified in the certificate.

[68] Section 45F does not state that the evidence of the said offences under ss. 44 or 45 involving intoxicating alcohol or s. 45A is a statement produced by the prescribed breathalyser pursuant to an initial breath test under s. 45B and a statement produced by a breathalyser of a breath test under s. 45C or a certificate signed by a Government medical practitioner of blood or urine test of a blood or urine test conducted under s. 45C after the "initial breath test" conducted under s. 45B of the RTA.

[69] For this reason, we find that the High Court fell into error and was plainly wrong to have read words into the RTA – that the breath test under s. 45B was an "initial breath test" and that the breath test, or blood or urine test under s. 45C is mandatory if the "initial breath test" under s. 45B was "positive" – when no such words are stated in the said sections RTA.

[70] Further, we find that the High Court was plainly wrong to hold based on r. 4 of the BBU Test Rules that a police officer is under a legal duty to procure two specimens of breath for the breath test under s. 45B(1) of the RTA. Rule 4 of the BBU Test Rules expressly state that the procedures in the First Schedule of the BBU Test Rules are applicable for breath tests conducted under s. 45C of the RTA. Nowhere does it state that it is applicable for breath tests conducted under s. 45B of the RTA. Similar to what it did with ss. 45B and 45C of the RTA, the High Court had read words into the BBU Test Rules where none exist. Rule 4 of the BBU Test Rules reads:

> 4. Breath test
>
> Where a police officer requires a person to provide specimens of breath for a breath test **under section 45C of the Act,** the police officer shall conduct the breath test in accordance with the procedures as set out in the First Schedule. (emphasis added)

Conclusion

[71] For these reasons, we find that the High Court's decision in holding that the breath test or blood or urine test under s. 45C of the RTA is mandatory for offences under ss. 44 and 45 involving intoxicating liquor and s. 45A for driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit, and the High Court's setting aside of the respondent's conviction under s. 45A(1) of the RTA were plainly wrong and warrants this court's appellate intervention.

[72] Although the DPP during the hearing of this appeal orally informed us that he is not proceeding with the appeal against the respondent's acquittal, he did not withdraw the appeal against the acquittal. Additionally, the fact that the respondent's acquittal was based on the High Court's wrong construction and interpretation of the RTA, means that the acquittal was unsafe.

[73] Therefore, the High Court's decision is set aside. The Magistrate's conviction of the respondent under s. 45A(1) of the RTA is restored.

[74] Based on the facts and the submissions by both parties, and taking into account that this is the respondent's first offence, he is employed as a Bank Officer, and his offence did not cause or result in any accident, injury to any third-party and/or damage to property, we hereby exercise our discretion to set aside the sentence of 14 days imprisonment by the Magistrates' Court and substitute it with a sentence of one day imprisonment with effect from today.

[75] As for the sentence of a fine, we hereby increase the amount of fine from RM10,000 to RM15,000, in default six months imprisonment. The order of suspension of his driving licence for a period of two years is affirmed.